

Health MVP: Latham & Watkins' Daniel Meron

By Dani Kass

Law360, New York (December 7, 2016, 1:29 PM EST) -- Latham & Watkins LLP partner Daniel Meron brought in a major victory for the University of Massachusetts Medical School when the First Circuit granted it immunity in a False Claims Act suit, and is helping UnitedHealthcare navigate its own FCA litigation, making him one of Law360's Health MVPs of 2016.

The former U.S. Department of Health & Human Services general counsel is co-chair of Latham's health care and life sciences practice and health care services and providers industry group. To secure the University of Massachusetts win, though, he had to be sworn in as a special assistant attorney general for the state.

That whistleblower suit alleged the medical school had collected tens of millions of dollars in improper Medicaid and Medicare reimbursements and allowed an employee to embezzle millions of dollars, Latham said. Meron convinced both a district court and the First Circuit — in a case of first impression — that the school was a government actor, immune from the suit.

"[Immunity for state schools] absolutely has [come up] in other situations not involving the False Claims Act, and most courts have held that state universities are immune as state actors, but it's not uniform," Meron said. "It depends somewhat on the structure of the university. The First Circuit has previously held the University of Rhode Island isn't a state actor. The cases are very fact-specific."

The whistleblower has appealed the January decision to the U.S. Supreme Court and Meron is waiting to see if the justices will grant certiorari.

Meron's sights right now are largely turned to two UnitedHealthcare suits, both relating to so-called risk-adjustment payments for Medicare Advantage plans.

The first was brought by the insurer in January, arguing the U.S. Department of Health has unlawfully implemented an Affordable Care Act requirement for Medicare Advantage plans to return overpayments within 60 days of identifying them.



According to UnitedHealthcare, a Centers for Medicare & Medicaid Services 2014 final rule forces insurers to more rigorously weed out unsupported diagnoses, making their customers appear healthier than traditional Medicare beneficiaries and therefore lowering risk adjustment payments that cover the costs of sicker customers.

That case is currently in the motion-to-dismiss stage.

“The challenge for us as lawyers in litigating a case like that is explaining complicated regulatory provisions in a way that makes sense to non-specialists,” Meron said.

On the other side of the table, Meron is representing UnitedHealthcare in a whistleblower's FCA suit in California federal court, alleging the plan turned a blind eye to faulty diagnoses in order to reap bigger Medicare Advantage payments.

The district court dismissed the case, but the Ninth Circuit revived it in August, allowing the whistleblower to amend his complaint.

Meron joined Latham in 2008, following about five years at HHS — where President George W. Bush appointed him general counsel — and the U.S. Department of Justice. He had previously worked at Sidley Austin LLP for eight years. Before joining that firm, he clerked for Justice Anthony Kennedy and at the D.C. Circuit.

It was at the DOJ where he was largely exposed to health care law, having come from an administrative law and litigation background.

“It’s a fascinating area,” he said. “Legally, it has lots of great issues of statutory interpretation, administrative law and litigation, which are all things I enjoy. Beyond that, the underlying policy issues are ones we can all relate to. There’s no one who’s not touched one way or another by our health care system.”

--Additional reporting by Jeff Overley. Editing by Kelly Duncan.